Supreme Court, U.S.
FILED

(1) 96 870 AUG 1 1996

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

NORMAN L. CAMPBELL

Petitioner,

v.

QUAD CITY TIMES

Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

Dennis A. Bjorklund
Bjorklund Law Office
22 East Court Street
Iowa City, Iowa 52240
(319) 351-1527

18 pp

QUESTIONS PRESENTED

I. Whether the First Amendment Principles Applicable to the Broadcasting Media Under the Court's Holding in Red Lion Broadcasting v. FCC Should Be Made Applicable to Newspapers to Create a Limited Constitutional Right of Access to Media

II. Whether the Court's Decision in Gertz v. Welch Leaves Uuprotected a State's Legitimate Interest in Compensating Private Individuals for Harm Suffered By Defamatory Falsehood Through the Law of Libel in Contravention of the Tenth Amendment

LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1) Norman L. Campbell

2) Quad City Times, a Division of Lee Enterprises Incorporated a Delaware Corporation.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL PROVISIONS 2

REASONS FOR GRANTING WRIT 3

STATEMENT OF THE CASE 5

ARGUMENT 9

CONCLUSION 28

APPENDIX 1-1

TABLE OF AUTHORITIES

Cases — Page

United States Supreme Court

Abrams v. United States, 250 U.S. 616 (1919) 14

Associated Press v. United States, 326 U.S. 1 (1945) 14

FCC v. Pacifica, 438 U.S. 726 (1978) 15

Gertz v. Welch, 418 U.S. 323 (1974) 4,23-28

Ginzburg v. United States, 383 U.S. 463 (1966) 20

Haines v. Kerner, 404 U.S. 519 (1972) 7

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) . . . . . passim

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 14,24,26

Planned Parenthood v. Casey, 505 U.S. 833 (1992) 10-11

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) . . . . . passim

Rosembloom v. Metromedia Inc., 403 U.S. 29 (1971) 24

Federal Appellate Court

Childs v. Duckworth, 705 F.72d 915 (7th Cir. 1983) . 8

Federal District Court

Schreier v. Weight Watchers Northeast Region Inc., 872 F. Supp. 1 (E.D. N.Y. 1984) 8

Thompto v. Coborn's Inc., 871 F. Supp. (N.D. Iowa 1994) 25

State Supreme Court

Vinson v. Linn-Mar Community School District, 360 N.W.2d 108 (Iowa 1984) 25-26

Other Sources

U.S. CONST. amend. I . . . . . passim

U.S. CONST. amend. X 23,28

Restatement (Second) of Torts § 621 cmt. a. (1965) . 27

T. Baron Carter, Right of Reply Versus the Sullivan Rule: Time for a Second Look, 27 Loy. L. Rev. 41 (1981) 16-19

Jerome A. Baron, Acess to the Press: A New First Amendment Right, 80 Harv. L. Rev. 1641 (1967) . 20-21

OPINIONS AND ORDERS BELOW

The following orders and opinions have been entered by the courts below:

1. Order granting Defendant's Motion for Summary Judgment entered by the Iowa District Court in and for Scott County in Cause No. 84251 on April 18, 1994, as an unpublished opinion. (App. 3-1).

2. Order of the Iowa Court of Appeals in case No. 5-514 on February 28, 1996, and is a published opinion. (App. 4-1).

3. Order of the Iowa Supreme Court in case No. 94-828 on May 3, 1996, and is a published opinion. (App. 5-1).

JURISDICTION OF THE SUPREME COURT OF THE UNTIED STATES

The date on which the Iowa Court of Appeals decided the case was February 28, 1996. (See Appendix 4-1).

A timely petition for further review was thereafter

denied on May 3, 1996. (See Appendix 5-1).

The jurisdiction of this Court is invoked under U.S. CONST. art. III, § 2, cl. 1 which states that the judicial power shall extend to all cases in law and equity arising under the Constitution.

CONSTITUTIONAL PROVISIONS

1. First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

2. Tenth Amendment to the United States Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

REASONS FOR GRANTING THE WRIT

Petitioner Campbell asks this Court to grant his writ of certiorari for the following reasons. The doctrine of *stare decisis* enunciated by this Court requires that an opinion be reexamined and consequently overruled if the underlying facts of the opinion no longer hold true. An opinion may also be reexamined when the decision is incompatible with precedent in a related field. Petitioner argues that both scenarios have been met in this case, and consequently the decision in Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974), ought to be overruled. The holding in Tornillo providing First Amendment protection to newspapers by not requiring them to publish the reply of a political candidate who was the subject of its criticism is in direct conflict with the holding in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), that required broadcasters, under the fairness doctrine and its manifestations, to give free air time to those individuals who were made the subject of a personal attack. The differential approach of access to the media adopted by the Court in order to apply different First Amendment standards to newspapers and broadcasts based on the differences between the two mediums no longer holds true, so the same First Amendment principle ought to apply to both. Because the fairness doctrine and its manifestations in the personal attack rule and political editorials are more

consistent with principles of the First Amendment, the holding in Red Lion ought to be applied to newspapers as well. The *Quad City Times* published an article that amounted to a personal attack on the character of Campbell but refused to comply with the requirements of the fairness doctrine by publishing Campbell's reply to the story. Under a limited constitutional right of access to the media, Campbell's First Amendment rights were violated.

Petitioner also argues that the decision in Gertz v. Welch, 418 U.S. 323 (1974), that prohibits a State from setting its standard of liability in a libel action of a private citizen as liability without fault, is an encroachment of a State's sovereignty and a violation of the Tenth Amendment. The decision permits a State to set a standard of actual malice in a libel action of a private citizen, and unnecessarily deters potential plaintiff's from bringing suit because of the length, cost, and near impossibility of proving the elements of actual malice. Private individuals are neither public officials nor public figures and deserve more State protection of their good names. There ought to be no constitutional privilege for newspapers who defame private citizens.

STATEMENT OF THE CASE

Norman L. Campbell believed that the federal government was about to engage in an illegal charge and arrest of his person so he had a relative contact the *Quad City Times*. Campbell's relative conveyed those beliefs to the Quad City Times and after contacting the office of the federal government's attorney general in Iowa the following article was published on July 20, 1991 (App. 1-3 to 1-5).

Police Arrest Couple on Tax-Related Charge

Blue Grass, Iowa- A Blue Grass couple was arrested Friday on charges accusing them of failing to produce income tax records.

Federal marshals arrested Norman L. Campbell, 61, and Janice E. Campbell, 48, of 6480 131st Street, about 8 a.m. at their home. He owns Campbell Office Supply in Davenport.

Officials said the couple was taken before Chief Judge Harold Vietor of the U.S. District Court in Des Moines. He ordered them both held in contempt of court for

> refusing to produce tax records for the years 1988-1989.
>
> Norman Campbell failed to pay a portion of his taxes in 1989, officials said. Vietor ordered him imprisoned for 120 days and fined $100 per day, up to a maximum of $10,000, until he produces the records.
>
> Mrs. Campbell was released from custody, but was also fined $100 per day up to the maximum of $10,000 until she produces the records (App. 3-2; 4-2 to 4-3).

According the the Iowa Court of Appeals, the article contained an inaccuracy; stating Norman Campbell was fined and imprisoned when in fact he had only been imprisoned (App. 4-6). After the article was published Campbell contacted the *Quad City Times* and demanded a retraction of the story or that he be given space in order to reply to the controversy (App. 1-7; 1-9). In a phone conversation the *Quad City Times* considered Campbell's version of the events but refused to publish his reply (App. 1-9 to 1-10).

On July 15, 1993 Norman Campbell filed a libel petition in the Iowa District Court naming the *Quad City Times* as a defendant (App. 3-2 to 3-3). The *Quad City*

Times moved for summary judgment and that motion was heard by the Honorable Bobbi Alpers on March 18, 1994 (App. 3-1). In granting the defendant's motion, the District Court determined as a matter of law, that with the exception of the fine against Campbell, all matters reported were substantially true (App. 3-13; 3-14).

On February 28, 1996 the Iowa Court of Appeals affirmed in all respects the District Court's grant of summary judgment in favor of the Quad City Times (App. 4-8). Campbell's petition for rehearing by the Iowa Supreme Court was denied on May 3, 1996 (App. 5-1).

Campbell proceeded pro se throughout his libel claim in the State courts. The arguments forwarded in this petition for writ of certiorari were not made at either the District or Appeals Court levels. This brings into question whether the federal questions were timely and properly raised so as to give this Court jurisdiction to review them. Campbell asks this Court to consider its precedent on pro se litigants before refusing to exercise jurisdiction on the grounds that the federal issues were not timely and properly preserved.

In Haines v. Kerner, 404 U.S. 519 (1972), the Court held that allegations of a pro se complaint are held to a less stringent standard than formal pleadings drafted

by lawyers. Id. at 520. Campbell argues that because arguments made to the Court naturally follow from the pleadings, a less stringent standard should apply to the arguments attempted to be made by a pro se litigant. The defendant, whose motion for summary judgment stated it was not constitutionally required to provide space to Campbell, acknowledged the type of claim Campbell was trying to make but lacked the necessary legal skills to articulate. Campbell also prays that the Court consider lower federal court decisions on this issue. In Schreier v. Weight Watchers Northeast Region Inc., 872 F. Supp. 1 (E.D. N.Y. 1984) the court held that a reasonable allowance must be given to pro se plaintiffs to ensure that the plaintiff does not forfeit his rights because of a lack of legal training. Id. at 3. In Childs v. Duckworth, 705 F.2d 915 (7th Cir. 1983) the court held that courts must ensure that claims of pro se litigants are given fair and adequate consideration; particularly where First Amendment concerns are present. Id. at 918. Campbell's lack of legal training, along with the complexity of the subject, prevented him from being able to articulate his First Amendment claims. Campbell's legitimate interests in his constitutional rights would not be vindicated if this Court refused to exercise its jurisdiction over his claim.

ARGUMENT AND AUTHORITY

I. CAMPBELL'S FIRST AMENDMENT RIGHT OF ACCESS TO PRESS WAS VIOLATED WHEN QUAD CITY TIMES REFUSED TO PUBLISH CAMPBELL'S REPLY TO AN ATTACK ON HIS CHARACTER

A. MIAMI HERALD PUBLISHING CO. v. TORNILLO IS INCOMPATIBLE WITH EXISTING PRECEDENT, AND FACTS HAVE CHANGED TO JUSTIFY OVERRULING THE DECISION

In Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241(1974) a unanimous Court held that a Florida statute requiring a newspaper to print the reply of a candidate for public office whose character was the subject of criticism in published editorials violated the First Amendment guarantee of free speech and press. Id. at 258. Tornillo was the head of a teacher's association and was seeking a seat in the Florida House of Representatives. Id. at 243. Tornillo was the subject of two published editorials accusing him of leading an illegal teachers strike that was contrary to the public's interest. Id. at 244. Tornillo responded to the editorials by demanding that the *Miami Herald* print word-for-word

his reply defending the accomplishments of the teacher's association. Id. The *Miami Herald* refused to publish the reply so Tornillo brought suit under Florida's right of reply statute § 104.38 (1973). Id. The statute provided that if any candidate seeking public office is attacked by a newspaper regarding his character or his record, the candidate could demand that the newspaper print, free of cost to the candidate, his reply to the charges. Id.

In its holding, the Court indicated its dislike of the State imposed requirement that newspapers print material that would otherwise go unprinted. Id. at 246. The Florida statute impermissibly struck at the core function of the job of editor. Id. The Court reasoned that newspapers worked with finite space limitations and any requirement that a candidate's reply be printed meant excluding material the newspaper wished to publish. Id. In addition, the Court recognized that a financial burden would be placed on newspapers if they were required to print free of cost a candidate's reply. Id. The Court concluded that the Florida statute would have a chilling effect on the newspaper's First Amendment rights because newspapers would be induced to print uncontroversial material to avoid the requirements of the statute. Id.

In Planned Parenthood v. Casey, 505 U.S. 833 (1992), Justice O'Connor discussed the doctrine of *stare*

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decisis indicating that the holding in Roe v. Wade, U.S. (1974) was neither at odds with other precedent nor had its underlying facts changed as to no longer render viability as the appropriate point at which the balance tipped. Id. at 860. Based on those two considerations, O'Connor concluded that the rule of *stare decisis* demanded the reaffirmation of the Court's prior decision in Roe. Id. at 861. Campbell argues that the principles of *stare decisis* enunciated in Casey require this Court to reconsider and overrule its decision in Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1971). Specifically the Court's holding in Tornillo is incompatible with the Court's decision in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), which involved the application of the First Amendment to the broadcast media. The factual underpinnings of Tornillo, which led the Court to consider, but reject an argument supporting an enforceable constitutional right of access to the media, has changed dramatically to include the creation of a powerful monopoly controlled by owners of the press.

In Red Lion, the Court held that Congress and the FCC did not violate the First Amendment when they required radio and television stations to provide reply time to individuals subjected to personal attacks or political editorials. Red Lion, 395 U.S. at 396. Early in its history the FCC imposed a requirement (known as the

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fairness doctrine) on all radio and television broadcasts that public issues be discussed, and that each side of those issues be given fair coverage. Id. at 369. The manifestations of the fairness doctrine in the personal attack rule in the context of public issues, and political editorializing were codified in an Amendment to § 315 of the Communications Act of 1967. Id. at 370.

The facts of Red Lion involved a radio station that aired Reverend Hargis' commentary on a book written by Fred Cook about Barry Goldwater. Id. at 371. Hargis made three allegations: 1) Cook was fired from his job at a newspaper for making false allegations involving city officials; 2) Cook was affiliated with the Communist Party; and 3) Cook had attacked J. Edgar Hoover and the CIA. Id. at 372. After hearing of the broadcast and determining he had been personally attacked, Cook demanded free air time to reply but to the station declined. Id. The FCC initially determined that Hargis' broadcast amounted to a personal attack on Cook, and that Red Lion failed to act in accordance with the requirements of the fairness doctrine. Id. The FCC ordered Red Lion to give Cook reply time regardless of whether Cook would pay for it. Id. The constitutionality of the FCC's initial determination was the central issue on appeal. Id.

Broadcasters challenged the constitutionality of

the fairness doctrine and its manifestations in the personal attack and political editorial rules on First Amendment grounds. Id. at 386. Broadcasters urged that the doctrine and its manifestations violated the free speech and press clauses of the First Amendment because broadcasters had the right to use their frequencies to broadcast whatever programming they chose, and it also included the ability to exclude whomever owners chose to exclude from their frequencies. Id. The Court responded by indicating that although broadcasting was a medium affected by the First Amendment, differences in its characteristics justified the use of different First Amendment standards. Id. at 387. The Court stated:

> There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a fiduciary with obligations to present those views which are representative of the community, and which would otherwise be barred from the airwaves. Id. at 369.

The Court reasoned that the First Amendment neither provided a licensee a right to exclude others from broadcasting on their frequency, nor did it provide an unconditional monopoly of a scarce resource which the government denied others the right to use. Id. at 391.

The Court reasoned that the First Amendment does not tolerate private censorship in a mode of communication not open to everyone. Id. at 392. The Court concluded:

> It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which the truth ultimately prevails rather than countenance monopolization of the market whether by government or private individuals. Associated Press v. United States, 326 U.S. 1, 20 (1945); New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Id.

Broadcasters also argued that the fairness doctrine and its manifestations would have a chilling effect on their First Amendment rights leading some (if not all) broadcasters into self censorship and the elimination of coverage of controversial public issues. Id. at 393. The Court rejected the chilling effect argument indicating the results predicted by broadcasters was speculative at best. Id. Licenses were a scarce commodity whose terms and conditions were regulated by the FCC. Id. at 394. The power to renew or revoke licenses provided the appropriate level of incentive for broadcasters to carry out their fiduciary obligation to cover public issues

fairly. Id.

B. THE UNDERLYING BASIS OF THE DIFFERENTIAL APPROACH OF ACCESS TO THE MEDIA NO LONGER APPLIES, SO BOTH MEDIUMS SHOULD BE TREATED UNDER THE SAME FIRST AMENDMENT PRINCIPLE

It appears that the holdings in Red Lion and Tornillo are incompatible. In Tornillo, the First Amendment is the basis for protecting newspapers from having to print the replies of individuals seeking political office whose character has been challenged. Yet in Red Lion, the First Amendment is the basis for requiring broadcasters to provide free air time to victims of its criticism. The apparent conflict in results is explained by reference to the differing characteristics in various types of media which calls for the application of different First Amendment standards to each. Red Lion, 395 U.S. at 387. The Court seems to show its acceptance of this differential approach of access to the print and broadcast media in its decision in a later case. FCC v. Pacifica, 438 U.S. 726, 749 (1978). Any differences existing today between the print and broadcast media are more apparent than real. The decision in Tornillo should be overruled in favor of applying the standards enunciated

in Red Lion to both the print and broadcasting media.

1. While Technological Scarcity Allows Government Intervention Into Broadcasting, Economic Scarcity Has Eliminated Access to Newspapers

In Tornillo, Justice Burger relied on the notion of scarcity to explain why the First Amendment standard applied to broadcast media in Red Lion would not be applied to newspapers. Tornillo, 418 U.S. at 278. The FCC was created to combat the problem of too many competing voices trying to broadcast over the same frequency. Red Lion, 395 U.S. at 376. Because technology limited the number of available frequencies, not everyone who sought a license was granted one. Id. Those individuals fortunate enough to obtain a license are considered agents of the public because the public owned the airwaves. Id. Licensees owe a fiduciary obligation to the general public, and the fairness doctrine and its manifestations are all aspects of that obligation. Id. at 378. However, a scarcity argument caused by economics can be made on behalf of the print media which calls for some level of government or judicial intervention as was seen by the creation of the FCC in broadcasting for problems caused by technological scarcity. T. Baron Carter, In Right of Reply Versus the Sullivan Rule: Time for a Second Look, 27 Loy. L. Rev. 41, 48 (1981).

In Tornillo, supporters of a limited right of access to the media assert that the press of today is dramatically different from the press that existed at the time of the Framers of the Constitution. Tornillo, 418 U.S. at 248. Competing newspapers in large cities had been eliminated by competition, and the creation of national news organizations, a sharp increase in chains, networks, cross ownership, and other forms of media conglomeration substantially foreclosed a formerly inexpensive channel of communication once available to nearly everyone. Id. at 249; In Right of Reply, 27 Loy. L. Rev. at 43. By mentioning the technological scarcity in broadcasting, which called for government intervention, the Tornillo Court demonstrated that the First Amendment rights of broadcasters were not comparable to everyone's First Amendment rights to speak, write, and be published. Tornillo, 418 U.S. at 388. In the case at hand, Campbell argues that scarcity is scarcity. Because economic scarcity has befallen the press by making access for the ordinary individual nearly impossible, a broadcaster's and newspaper's First Amendment rights are comparable and ought to be treated in the same way.

The two cases share other logical inconsistencies as well. In Red Lion, the Court rejected an argument by broadcasters that the fairness doctrine and its accompanying rules would have a chilling effect on the

First Amendment rights of the broadcasters; so much so that no debate would occur. Red Lion, 395 U.S. at 393. However, in Tornillo the Court recognized the existence of a chilling effect when newspapers were forced to allocate space to the replies of political candidates who had been subjected to criticism. Tornillo, 418 U.S. at 257. What made the Court recognize a chilling effect on the First Amendment rights of newspapers but not of broadcasters. Carter argues that any apparent chilling effect from requiring replies would seem to be on broadcasters (where none was found) rather than on newspapers. In Right of Reply, 27 Loy. L. Rev. at 49. Broadcasters deal in hours and minutes rather than pages, and it is broadcasters who cannot simply add more time to the end of a broadcast day. Id. Free air time to be allocated for replies to a broadcast's personal attack necessarily means the elimination of an item(s) that the broadcaster preferred to air, yet no chilling effect was identified in Red Lion. Newspapers, on the other hand, deal in potentially infinite pages and would simply be required to add a page(s) to its finished product to accommodate replies of candidates who were criticized. Unlike broadcasters, newspapers would not have to exclude any material it wished to publish. Id. Admittedly the additional pages will represent a cost to newspapers, but that cost is minimal, and under the fairness doctrine reply time must be allocated without cost. Id.

An additional inconsistency in the two opinions involves the finding that the Florida Statute unconstitutionally interfered with the province of the duties of the editor. Tornillo, 418 U.S. at 258. Curiously no mention is made of the unconstitutional interference the fairness doctrine imposed on producers and directors in Red Lion. See In Right of Reply, Loy. L. Rev. at 50. Surely the job tasks performed by editors and producers require similar types of decision making, yet it is identified as a problem only in Tornillo. Id. With the rapid growth in technology, distinctions that existed previously between various types of media have become blurred. Id. Campbell argues that because no real differences exist between print and broadcast media, the First Amendment principle applied to each ought to be the same.

2. Fairness Doctrine in *Red Lion* Requiring Application to Personal Attacks and Political Editorials are Consistent with First Amendment Principles to Apply to Newspapers

One potential problem for the position advanced by Campbell is identifying the authority that enables one to apply the fairness doctrine to newspapers. In Red Lion, the Court indicated that the fairness doctrine and its manifestations were all done pursuant to authority

granted to the FCC by Congress. Red Lion, 395 U.S. at 375. Newspapers are not subject to regulation by Congress. Campbell argues that the best solution consistent with treating both mediums the same would be for this Court to recognize a limited right of access to both newspapers and broadcasts as a component of the First Amendment itself. In Red Lion the Court stated:

> Application of the fairness doctrine and promulgation of regulations are both authorized by Congress and *enhance* rather than abridge the freedoms of speech and press protected by the First Amendment. Id. (emphasis added).

According to Ginzburg v. United States, 383 U.S. 463 (1966), where commercial interests are the principle concern of newspapers and broadcasts, suppression of ideas is often the consequence. Jerome A. Baron, Access to the Press: A New First Amendment Right, 80 Harv. L. Rev. 1641, 1663 (1967). The days of inexpensive outlets of communication such as books, pamphlets, and newspapers have been replaced by a mass media industry where power is concentrated in the hands of a few owners. Id. at 1643. Producers and editors more concerned about profits than ideas inevitably avoid the airing of unconventional, sometimes unpopular ideas for fear of losing their mainstream audiences. Id. at

1663. It is desirable to encourage widespread debate on public issues and to provide an outlet for expression of all points of view- even unconventional ideas that may be unpopular. Id. at 1678. The concentration of power into the hands of a few in the media leaves unexpressed ideas that would contribute to the marketplace. Id. Uniform application of a right to reply enhances debate because it ensures an outlet for those unconventional ideas which would otherwise be suppressed. Id. The Red Lion case stands for the proposition that there is no room in the First Amendment for a monopoly, rather its purpose is to ensure a robust, uninhibited market. The current news monopoly has failed to protect this vision of the First Amendment, and therefore a limited right of access should be ensured under the First Amendment. Id. at 1656. The ability of the individual to respond to an attack on his character should be at the core of theory that provides an individual who is not a member of the press with an opportunity to exercise his First Amendment rights. Id. at 1658, 1659.

3. *Quad City Times'* Actions Are Inconsistent With Requirements of Fairness Doctrine and Personal Attack Rule, and Campbell's First Amendment Rights Were Violated

By overruling its decision in Tornillo, and

recognizing a limited constitutional right of access to the media consistent with the principles enunciated in Red Lion, this Court should find that Campbell's First Amendment rights were violated. Two duties accompany the fairness doctrine: First, the media must provide adequate coverage of the public issue. Second, the coverage must be fair in that it accurately reflects both sets of viewpoints. Red Lion, 395 U.S. at 377. Under the personal attack rule, if an attack is made on a figure involved in a public issue, the fairness doctrine requires that the individual attacked be given an opportunity to respond. Id.

Campbell argues that his First Amendment rights were violated because the *Quad City Times* failed to conform with the guidelines of the fairness doctrine and the personal attack rule. Under the personal attack rule, Campbell need not be a candidate for public office to have constitutional protection. Campbell need only be a figure involved in a public issue. Clearly Campbell was involved in a controversial public issue- whether the federal government engaged in an illegal criminal charge and arrest of Campbell. The article was an attack on Campbell because it indirectly named him as a criminal (violation of civil contempt order) and suggested that he violated United States tax laws. In view of this attack, the *Quad City Times* was required to provide Campbell with space to reply to the charges. By refusing to allow

Campbell space to reply, the article violated both prongs of the fairness doctrine. The coverage was not adequate because it contained a false statement of the penalty Campbell had received, the article reported Campbell was fined and imprisoned when he was not fined, and was not fair because Campbell's side of the issue was never reported in the article. The article reported only the federal government's version of the events in contravention of Campbell's First Amendment rights.

II. GERTZ v. WELCH REPRESENTS AN IMPERMISSIBLE ENCROACHMENT INTO A STATE'S SOVEREIGNTY IN VIOLATION OF THE TENTH AMENDMENT

In Gertz v. Welch, 418 U.S. 323, (1974), the Court considered the extent of a publisher's privilege from liability based on the defamation of a private citizen. Id. at 325. The Court held that States had the power to define the standard of liability for a publisher who had defamed a private individual as long as that standard was not liability without fault. Id. at 347. The Court also held that punitive damages were unavailable in a defamation action of a private citizen absent a showing of actual malice. Id. at 349. The facts in Gertz involved a police officer who killed a youth named Nelson. Id. at 325. Nelson's parents hired an attorney, Gertz, to represent them in civil litigation against the

officer. Id. Welch, who published a magazine, accused Gertz of being the architect of framing the officer in the criminal trial. Id. at 326. Welch also accused Gertz of being a member of the Communist Party, and having membership in an organization that led an attack on the Chicago police in 1968. Id.

The statements made by Welch were found to have contained numerous inaccuracies. Id. As Gertz was considered to be neither a public official or figure, the issue became whether actual malice standard enunciated in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), was applicable to a publisher printing a defamatory falsehood about a private citizen. Id. at 327. In rejecting the plurality's approach in Rosembloom v. Metromedia Inc., 403 U.S. 29, 70 (1971), which held that all discussions on matters of public concern deserve Sullivan protection from liability for defamatory statements, the Gertz Court argued that a different standard should govern defamation of a private individual. Id. at 338. Private individuals lacked access to channels of communication needed to rebut charges made against them that public officials and figures often enjoy. Id. The Court also noted that private individuals, unlike either public officials or figures, did not voluntarily place themselves into the watchful eye of the media. Id. The Gertz Court concluded that the State's interest in preserving the reputation of its private citizens

was greater than its interest in preserving the reputations of its public officials and figures because of the vulnerability to private citizens and there failure to assume the risk of an intrusive media into their lives. Id. at 344, 345.

The majority in Gertz characterized the State's legitimate interest in libel law as the compensation of individuals for harm caused by defamatory falsehoods. Id, at 341. The majority recognized that false statements have no constitutional value; neither the careless error nor the intentional lie advance the First Amendment's goal of rigorous debate. Id. at 340. However, by not allowing the States to impose strict liability against a publisher who defamed a private citizen, the Court allowed State's to set their ceiling too high; so high in fact that some intentional victims of defamation cannot recover for the harm done to their names. In Thompto v. Coborn's Inc., 871 F. Supp. 1097 (N.D. Iowa 1994), a federal district court defined libel under Iowa law as the malicious publication expressed in writing that tends to injure the reputation of another person or to expose that person to public hatred, contempt, ridicule, or to injure the person in the maintenance of the person's business. Id. at 1125; Vinson v. Linn-Mar Community School District, 360 N.W.2d 108, 115 (Iowa 1984). To prevail on a defamation claim a plaintiff must prove that the statements were false, malicious, and caused damage.

Id.

Campbell argues that the holding in Gertz has deterred potential plaintiffs from bringing libel suits because of the length, cost, and uncertainty of results. By permitting States to set the ceiling as high as New York Times for the defamation of a private individual, the primary concern of providing a means by which individuals can restore their good names cannot be undertaken. In his opinion in Gertz, Justice White argues that neither the decision in New York Times nor its progeny stand for the proposition that the First Amendment can be used to deprive citizens of recourse to an action for defamation to redress the publishing of falsehoods that damage their reputations. Id. at 387 (White, J., dissenting). Justice White complains:

> Under the Court's new rules, the plaintiff must prove not only the defamatory statement but also some degree of fault accompanying it. The publication may be false and the wrong to him unjustified, but his case will nevertheless be dismissed for failure to prove some fault by the publisher-the defamer, the only culpable party. Only he circulated the falsehood and was not required to. Why should the ordinary citizen carry the risk of damage

> and suffer injury in order to vindicate First Amendment values by protecting the press from liability for circulating false information. Id. at 392.

White discussed the history of libel law indicating the standard initially relied upon by the states was strict liability with truth as an affirmative defense. Id. at 373. At the heart of the libel damage scheme was an award of general damages for the loss of one's reputation. Id. General damages were awarded without special proof from the victim because injury was presumed from the content published. Id.; see Restatement (Second) of Torts § 621 Comment A. White concludes by lamenting the power of the mass media; arguing the system will not survive if private individuals have no recourse for protecting their interests in their good names. Id. at 402.

Campbell's case is illustrative. Under a strict liability standard for the defamation of a private individual, Campbell established a claim for defamation based on false and inaccurate statements of the article published by the *Quad City Times*. But because the Iowa standard is one of actual malice, Campbell will find it nearly impossible to prove the subjective intent required to gain recovery. Campbell argues that their should be no constitutional privilege for publishers who defame private individuals whether by careless mistake or

intentional lie. Campbell argues that Gertz is a violation of the Tenth Amendment, which reserves all powers not delegated to the Federal Government to the States, because it impedes State's sovereignty. Libel law is a creature of State law and as such Gertz must be overruled.

CONCLUSION

For all the above stated reasons, Campbell requests that this Court find that the actions taken by the *Quad City Times* violated Campbell's First Amendment rights, and that Campbell be awarded space to respond to the publication in the form of an affirmative injunction.

Respectfully submitted,

DENNIS A. BJORKLUND
Counsel of Record
Bjorklund Law Firm
22 East Court Street
Iowa City, IA 52240
(319) 351-1527

ATTORNEY FOR PETITIONER
NORMAN L. CAMPBELL

APPENDIX 1

TRANSCRIPTION MADE ON JUNE 29, 1993, OF THE TELEPHONE CALL TO QUAD-CITY TIMES REGARDING FALSE STORY REPORTED IN THAT NEWSPAPER ON JULY 20, 1991.

THE EXACT DATE OF THIS PHONE CALL IS NOT CERTAIN (at this time)-IT WAS MADE SOMETIME BETWEEN JULY 27, 1991 AND JULY 30, 1991. (probably it was on July 29 or 30, 1991)

THIS CONVERSATION IS BETWEEN NORMAN L. CAMPBELL AND LINDA WATSON WHO WAS (IS?) THE CITY EDITOR OF QUAD CITY TIMES

Q.C.T: Quad City Times

N.C: Hello- say I'm calling about a story that you ran in the paper- and it's ah- in error and ah ah..

Q.C.T.: Who's the story written by?

N.C.: uh- it's not- there's not- it's not written by anybody- it's just a big headline there

Q.C.T: one moment (operator rang up to newsroom)

SUZY: Times newsroom, this is Suzy

N.C: Hello- say this is Norman Campbell- and ah on July 20, Saturday- you ran a story about my wife and I

SUZY: um ha

N.C: and it says "POLICE ARREST COUPLE ON TAX RELATED CHARGE"

SUZY: oh

N.C: this story is a complete error

SUZY: ok, I'll transfer you to the city editor- just a minute please.

L.W: Times newsroom, this is Linda Watson

N.C: Hello, I'm calling about a new story that the Times ran on ah July 20.

L.W: Uh ha

N.C: and the story is ah- it's completely false- falsification of the facts

L.W: which story are you referring to?

N.C: "POLICE ARREST COUPLE ON TAX RELATED CHARGE" July 20

L.W: ok and what is your name?

N.C: Norman Campbell

L.W: ok, well we have a news release from the attorney generals office on that

N.C: well I don't care where it came from- the facts are not correct

L.W: ok, so you were not arrested?

N.C: ah we was - ah - we were arrested without a warrant

L.W: um hm

N.C: and there was no charges- there was no crimes charged on the warrant

L.W: ah- I thought it was contempt of court?

N.C: there was no crime listed on it- and I - the other thing- I don't own Campbell Office Supply in Davenport- I own Northwest Office and Art Supplies in Davenport- and it says Campbell failed to pay a portion of his 1989 tax and that is a false statement. And it says I was fined $100 a day in addition to 120 day sentence in prison and that's not true.

L.W: ok

N.C: it makes - ah- this whole story makes it appear that we have broken a law or that we're tax evaders or something

L.W: um hm

N.C: and that is not the case

L.W: are you aware that an acquaintance was calling us that day you were arrested to let us know - on your behalf that you were arrested?

N.C: I hope so- I hope they was calling

L.W: pardon

N.C: I hope they were calling - yes

L.W: ok- I guess

N.C: and- and you never ran ...ran a story about that, did you?

L.W: I'm sorry- well they called to let us know you had been arrested- and we ran a story that you had been arrested.

N.C: I think they said kidnapped- is that what they said?

L.W: well

N.C: falsely arrested and kidnapped that's what they told me they told you

L.W: ok...we can't say that when someone's arrested that they've been kidnapped

N.C: oh, why not- because you said all these other false things and we were kidnapped and falsely arrested

L.W: well, let me- ah - we'll double check our sources on that. Could I get a phone number where I can call you back?

N.C: yes it's 3266-0788

L.W: ok

N.C: or 381-2192

L.W: ok..so Northwest Office and Art Supplies is- is the business that you own?

N.C: yes, and we - we weren't arrested, we were kidnapped, it was a false arrest and ah...

L.W: Have you filed a lawsuit or something claiming false arrest?

N.C: Yes I did, I filed, I filed criminal charges with the um.. U.S. Marshall

L.W: well you can't file a criminal charge...um

N.C: well I don't care-ah- I, I'm saying I'm just telling you the facts now, you can do what you want, I-ah-don't know how you can correct this...I've talked to several people today and - they all believe what you wrote here..

L.W: um hm

N.C: and they said it makes me appear as a tax evader and that I'm guilty of something

L..W: um hm

N.C: I mean it says I was arrested on certain charges

L.W: right

N.C: and I - and oh- and

L.W: we'll follow- we'll follow up the disposition of those charges

N.C: and uh...

L.W: and that you know

N.C.: and-and- you, you won't print the truth here then?

L.W: well- ah- you know whatever happens to those charges

N.C: ah- I'm out of jail now - it said 120 days - I'm out of jail, I'm not calling from jail, I'm calling from my store.

L.W: right, you posted bond

N.C: wrong, I haven't posted bond

L.W: then you've been released without bond

N.C: they, they just opened the door and said "go home"

L.W: yeah, did they dismiss the contempt charges then?

N.C: I really don't know because-I- they just opened the door and said to go home

L.W: ok, we'll double check and see what - you know, happened with the charges

N.C.: uh ha, well

L.W: and if they've

N.C: uh- well for slander and libel you can look for some response to that this is all slander- this is greatly injuring our- you know-ourselves, because when people assume what you wrote is true- then - ah- and then you put in facts that have the appearance of truth

L.W: um hm

N.C.: and - and look very legal and - when- when- when it's all false -ah there's - you, ah...well

L.W: well, we'll double check

N.C.: but you are not gonna make any effort to correct this?

L.W: no- we will make an effort to double check our sources - and if we -you know- determine that something is - is wrong here- then we definitely will take some steps to correct it. But what I'd like to do is double check what out sources were on the, it, you know- there obviously is some sort of - you know- we were told you were arrested- you say you were kidnapped- there's a difference of interpretation - a little bit there.

N.C.: ah- na- if they don't have a legal warrant for your arrest and that- ah -that could -- turn out to be nothing but kidnapping then- and ah- they were warned about that so...

L.W.: hmm

N.C: and ah- they- and they didn't keep - imprison me - for 120 days they didn't fine me $100 a day either- which

L.W: Have you had any previous arrests?

N.C: My tail light fell off my car about forty years ago

L.W: (she chuckled)

N.C.: ah- you know- is that what - you want my complete history- that's about it.

L.W: no, that's fine- ah well, let me double check on this now we got a news release from the attorney general office about this case.

N.C.: But you're the one that printed it- and when- if you don't check your story- then you - ah- you got a responsibility here.

L.W: Yeah, well we will certainly do that, but you know- the way we got on this was your acquaintances calling to let us know about it and - so I

N.C: Yeah but they said we were kidnapped- and they told you we were falsely arrested

L.W: right

N.C: because that's the only thing they knew of

L.W: right

N.C: and- ah- they couldn't - so false arrest

L.W: give me a

N.C: false arrest is not arrest

L.W: yeah, give me a little time to double check our original information on that- so then I can get back to you- and let you know what we determine.

N.C: and your name is?

L.W: My name is Linda Watson and I'm the City Editor

N.C.: ok,ok, and I- I'll expect some kind of a

L.W: I need to check on a couple of my people, one - he doesn't come in till later on today, so, it may not be until tomorrow - till I - you know- can get back to you- till I talk to the person that comes in later today.

N.C: you say your City Editor?

L.W: yes

N.C: ok, I wrote that down....ok, I'll expect to hear back from you

L.W: ok, thank you...good bye

N.C: um hmm...good bye

APPENDIX 2

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

Norman L. Campbell,

Plaintiff,

vs.

QUAD CITY TIMES, a Division of Lee Enterprises, Incorporated, a Delaware Corporation.

Defendant.

Law No. 84251

Affidavit in Support of Plaintiff's Response to the Defendant's Reply Regarding the Summary Judgment Motion

I, Edith M. Mohr, on the 17th day of March 1994, do solemnly swear that I have listened to an audio tape of two phone conversations between the Quad City Times, represented by a Ms. Linda Watson, and Norman Campbell regarding the request of Norman L. Campbell for a retraction of an article published by the Quad City Times of Davenport, Iowa on July 20, 1991 which represented that Norman L. Campbell and his wife Janice were arrested and fined for failure to produce records

and Mr. Campbell had been sentenced to prison for 120 days days for failing to pay taxes.

Attached hereto are faithful, true transcripts of said tape recording of those phone call conversations in question.

/s/ Edith M. Mohr
Edith M. Mohr

Sworn to and Subscribed Under Penalty of Perjury, on this 17th day of March, 1994, in the City of Davenport, State of Iowa, By Edith M. Mohr.

/s/Patricia A. McFadden
Notary Public in and for
the State of Iowa.

APPENDIX 3

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

NORMAN L. CAMPBELL, Plaintiff,	Law No. 84251
vs.	Filed April 18, 1994
QUAD CITY TIMES, a Division of Lee Enterprises, Incorporated, a Delaware Corporation, Defendant.	RULING ON MOTION FOR SUMMARY JUDGMENT

On the 18th day of March, 1994, the defendant's motion for summary judgment was presented to the Court with oral argument. The plaintiff appeared pro se, and the defendant appeared by Attorney John DeDonker. The Court has reviewed the file and has heard arguments of Mr. Campbell and Mr. DeDonker. The Court now makes the following findings.

On July 20, 1991, the Quad City Times ran the following story in its newspaper:

Police Arrest Couple on Tax-Related Charge

Blue Grass, Iowa - A Blue Grass couple was arrested Friday on charges accusing them of failing to produce income tax records.

Federal marshals arrested Norman L. Campbell, 61, and Janice E. Campbell, 48, of 6480 131st Street, about 8a.m. at their home. He owns Campbell Office Supply in Davenport.

Officials said the couple was taken before Chief Judge Harold Vietor of the U.S. District Court in Des Moines. He ordered them both held in contempt of court for refusing to produce tax records for the years 1988-1989.

Norman Campbell failed to pay a portion of his taxes in 1989, officials said. Vietor ordered him imprisoned for 120 days and fined $100 per day, up to a maximum of $10,000, until he produces the records.

Mrs. Campbell was released from custody, but also was fined $100 per day, up to the maximum of $10,000 until she produces the records.

On July 15, 1993, Norman L. Campbell , plaintiff, filed an action against the Quad City Times

asserting that the newspaper defamed him in the quoted newspaper article. The defendant answered denying plaintiff was entitled to relief.

The defendant brings this motion for summary judgment contending that the article in question was substantially true and this constitutes a total defense. Therefore, defendant contends that plaintiff's cause should be dismissed at plaintiff's costs. The plaintiff resists this motion for summary judgment asserting that there are material questions of fact.

Summary judgment is proper where the record viewed as a whole shows no genuine issues to any material fact and that the moving party is entitled to judgment as a matter of law. Iowa Rule of Civil Procedure 237(c) (1993). The requirement of a genuine issue of fact means the evidence is such that a reasonable jury could find for the non-moving party. Fees v. Mutual Fire and Automobile Insurance Co., 490 N.W.2d 55 (Iowa 1992), citing Hike v. Hall, 427 N.W.2d 158 (Iowa 1988). An issue of fact is "material" only where the dispute is over facts that might affect the outcome of the suit, given the applicable law. Sparks v. Metal Craft, Inc., 408 N.W.2d 347 (Iowa 1987). The moving party carries the burden of showing that there is no genuine issue of material fact and the moving party is

entitled to judgment as a matter of law. Enstrom v. State, 461 N.W.2d 309 (Iowa 1990). The Court is required to examine the record in the light most favorable to the non-moving party to determine whether the movant has carried the burden. Sandbulte v. Farm Bureau Mutual Insurance Co., 343 N.W.2d 457 (Iowa 1984).

The standards for summary judgment in defamation cases are discussed in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). In making a summary judgment decision, the U.S. Supreme Court found that a judge must perform "the threshold inquiry of determining whether there is a need for trial-- whether, in other words, there are genuine factual issues that properly can be resolved in favor of either party". Federal Rule 56, which is virtually identical to the Iowa Rule of Civil Procedure, mandates summary judgment should be granted if there is no genuine issue as to any material fact. According to the Anderson case, the materiality issue must be decided by reference to the substantive law. only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Summary Judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the

nonmoving party.

In deciding whether defendant's motion for summary judgment should be granted, the Court must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of this case. Specifically, the court examines the defendant's substantial truth defense as asserted in its motion for summary judgment. While this courts cognizant of the additional issues raised by the plaintiff at oral argument relating to events leading up to and including the arrest and detention of the plaintiff, the Court finds that these additional issues are immaterial to the disposition of the narrow question before the Court: whether the article in question was substantially true.

Substantial truth is a defense in a defamation action. Behr v. Meredith Corp., 414 N.W.2d 339 (Iowa 1987), citing Hovey v. Iowa State Daily Publication Board Inc., 372 N.W.2d 253 (Iowa 1985). If the libel defendant establishes that the "sting" or "gist" of the defamatory charge is substantially true, the defendant is not liable. The sting or the gist of the defamatory charge is "the heart of the matter in question- the hurtfulness of the utterance." Behr, quoting Vachet v. Central Newspaper, Inc., 816 F.2d 313 (7th Cir. 1987). The gist or the sting of the defamatory charge is to be

determined by looking at the highlight of the publication, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement. If the underlying facts as to the gist or sting of the defamatory charge are undisputed, the Court may determine substantial truth as a matter of law. Behr, citing Fendler v. Phoenix Newspaper, Inc., 636 P.2d 1257 (Ct. App. 1981). If said facts are undisputed, the test for summary judgment purposes is whether the plaintiff would have been exposed to any more shame had the publication been free of error. Behr, citing Fort Worth Press Co. v. Davis, 96 S.W.2d 416 (Tex. Civ. App. 1936).

The Court has read the whole published article and concludes that its pertinent angle is that two area residents failed to provide income tax records, and this resulted in there arrest.

The Court has also reviewed the certified record of the United States District Court, Southern District of Iowa, which contains the following facts:

1. On August 2, 1990, the IRS issued a summons requesting tax records that would reflect income

received by Norman L. and Janice E. Campbell for the years 1988 and 1989. (Page 126)

2. On March 28, 1991, an order enforcing said summons was entered by the Honorable Judge Harold Vietor. (Page 101)

3. An order to show cause why Norman L. and Janice E. Campbell should not be held in contempt of court for failure to comply with the court order enforcing summons was filed on May 21, 1991. (Page 94)

4. A warrant for the arrest of Janice E. and Norman L. Campbell was issued on July 8, 1991. (Pages 60 and 62)

5. Said warrants indicate that Janice and Norman were

both arrested on July 19, 1991, at 6480 131st Street, Blue Grass, Iowa. (Page 60 and 62)

6. On July 19, 1991 Norman L. and Janice E. Campbell were found to be in civil contempt. The Honorable Harold Vietor ordered that:

a. Norman L. Campbell be imprisoned for 120 days or until such earlier date as he complies with order of this court of March 28, 1991, and the summons of August, 1990.

b. Janice Campbell be fined $100 per day for each day that she persists in refusing to comply with the Court's order of March 28, 1991, and the summons of August, 1990, except that the fine liability shall not exceed

$10,000. (Page 86).

The first paragraph of the article at issue provides the following:

> Blue Grass, Iowa- a Blue Grass couple was arrested Friday on charges accusing them of failing to produce tax records.

The certified record of the federal court proceedings clearly shows the Norman L. and Janice E. Campbell were arrested for failure to produce tax records to the Internal Revenue Service in accordance with a summons requesting the same. An arrest warrant was issued for both Norman and Janice Campbell on July 8, 1991, that stemmed from the Campbell's' failure to produce income tax records originally requested by the Internal Revenue Service in August, 1990. while the plaintiff contends that he was kidnapped or that the warrant was invalid, these contentions are irrelevant to the narrow question of whether the article printed by the defendant was substantially true when printed. Based upon the certified record of the United State's District court, the court finds that the ;material contained in the first paragraph of the article is substantially true, if not actually true.

The second paragraph of the challenged article provides as follows:

> Federal marshals arrested Norman L. Campbell, 61, and Janice E. Campbell, 48, of 6480 131st Street, about 8 a.m. at their home. He owns Campbell Office Supply in Davenport.

It is undisputed that the Campbell's reside at 6480 131st Street in blue Grass, Iowa, and were taken into custody by the federal authorities at that same address. The plaintiff argues that defendant incorrectly stated the name of his business as Campbell office Supply; however, this is an item of secondary importance. These are inoffensive details, immaterial to the truth of any defamatory statement. The pertinent portion of the second paragraph is substantially true.

The third paragraph of the article provides the following:

> Officials said the couple was taken before Chief Judge Harold Vietor of the U.S. District Court in Des Moines. He ordered them both held in contempt of court for refusing to produce tax records for the years 1988-1989.

The certified record of the federal court unequivocally shows that the Honorable Harold Vietor found both Norman and Janice Campbell in contempt of court for their failure to comply with the summons and the court order enforcing the same on July, 19, 1991. Therefore, this portion of the article is true.

The fourth paragraph of the article provides the following:

> Norman Campbell failed to pay a portion of his taxes in 1989, officials said. Vietor ordered him imprisoned for 120 days and fined $100 per day, up to a maximum of $10,000 until he produces the records.

The first portion of this paragraph asserts that plaintiff failed to pay a portion of his taxes in 1989. At oral argument on this motion, counsel for the defendant asserted that the plaintiff had stated, in a telephone call to the defendant, that the Campbell's had not paid taxes in 1989 because they had permission not to pay. The defendant's assertion regarding this information from the plaintiff was not contested by the plaintiff.

The last sentence of the fourth paragraph does incorrectly report the punishment imposed on the plaintiff

for being found in contempt of court. The Honorable Judge Vietor's order states only that Norman Campbell shall be imprisoned for 120 days or such earlier date as he complies with the order of this court of March 28, 1991, and the summons of August, 1990. Norman Campbell was not fined in addition to said incarceration.

The fifth and final paragraph of the questioned article provides the following:

> Mrs. Campbell was released from custody, but also was fined $100 per day up to the maximum of $10,000 until she produces the records.

Judge Vietor, in his order finding Janice E. Campbell in contempt of court, expressly provided that "Janice E. Campbell be fined $100 per day for each day that she persists in refusing to comply with the court's order of March 28, 1991, and the summons of August, 1990, except that the fine liability shall not exceed $10,000." This paragraph accurately reports the judgment entered against Janice E. Campbell.

With the exception of the report of a fine being levied against Norman Campbell as contained in the fourth paragraph all of the matters reported about the

Campbell's by the defendant are at least substantially true. This being the case, the defendant's motion for summary judgment turns on whether the fourth paragraph constitutes the gist or the sting of the article about the Campbell's.

The gist or sting flowing from the article is that Norman and Janice Campbell were arrested and found in contempt of court for failure to produce their tax records as originally requested by the Internal Revenue Service. The facts underlying the gist or sting here are undisputed.

Whether the plaintiff actually failed to pay income taxes in 1989 is immaterial to the gist or sting that he was arrested and found in contempt of court for failure to produce those tax records, which is the heart of the matter in question. Damage to the plaintiff's reputation, if any, results from the fact that he was arrested and found in contempt of a court of law. The uncontroverted fact is that the plaintiff failed to produce the summoned records, was arrested, and found in contempt by the court. The sting is substantially the same whether the plaintiff failed to pay taxes or not. It is reasonable to conclude, therefore, as a matter of law, that had the fourth paragraph been free of error, the plaintiff would have been exposed to the same amount of shame. The

Court Concludes that the fourth paragraph is substantially true as a matter of law.

For this reason, the defendant's motion for summary judgment shall be granted. Judgment is entered in the defendant's favor, dismissing this petition as filed by the plaintiff, at the plaintiff's cost. This is SO ORDERED this 15th day of April, 1994.

/s/ Bobbi M. Alpers
Bobbi M. Alpers
Judge of the District Court

APPENDIX 4

IN THE COURT OF APPEALS OF IOWA

No. 5-514/ 94-828
Filed February 28, 1996

NORMAN L. CAMPBELL,

Plaintiff-Appellant,

vs.

QUAD CITY TIMES, a division of Lee Enterprises, Incorporated, a Delaware corporation,

Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge, and Bobbi M. Alpers.

Norman Campbell sued the Quad City Times for libel. He now challenges the order granting summary judgment in the Quad City Times' Favor.
AFFIRMED.

Norman L. Campbell, Davenport, pro se.

John D. DeDonker of Lane & Waterman, Davenport, for appellee.

Heard by Hayden, P.J., and Habhab and Cady, JJ.

HABHAB, J.

Norman L. Campbell sued the Quad City Times, a division of Lee Enterprises, Incorporated, claiming it libeled him. Mr. Campbell claims he was defamed in the following article published by the Quad City Times on July 20, 1991.

Police Arrest Couple on Tax-Related Charge

> **BLUE GRASS, IOWA** -- A Blue Grass couple was arrested Friday on charges accusing them of failing to produce income tax records.
>
> Federal marshals arrested Norman L. Campbell, 61, and Janice E. Campbell, 48, of 6480 131st Street, about 8 a.m. at their home. He owns Campbell Office Supply in Davenport.
>
> Officials said the couple was taken before Chief

> Judge Harold Vietor of the U. S. District Court in Des Moines. He ordered them both held in contempt of court for refusing to produce tax records for the years 1988-1989.
>
> Norman Campbell failed to pay a portion of his taxes in 1989 officials said. Vietor ordered him imprisoned for 120 days and fined $100 per day, up to a maximum of $10,000 until he produces the records.
>
> Mrs. Campbell was released from custody, but also was fined $100 per day up to the maximum of $10,000 until she produces the records.

The Quad City Times filed a motion for summary judgment, claiming their story was substantially correct. Mr. Campbell subsequently filed a motion for change of venue. The motion for change of venue was primarily based upon a claim that, because Mr. Campbell had filed complaints with the Judicial Qualifications Commission regarding three seventh district judges, he could not receive a fair trial in that district. He also claimed the inhabitants of Scott County could not give him a fair trial.

The district court denied the motion for change of venue. By a different judge, the court granted the Quad

City Times' motion for summary judgment. It held the Quad City Times' story was substantially correct.

Mr. Campbell appeals.

I. Motion for Summary Judgment. Mr. Campbell first contends the district court erred in granting the motion for summary judgment. Summary judgment is appropriate only if there exists no genuine issue of material fact. Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). We agree with Mr. Campbell the moving party, here Quad City Times, had the burden to show the nonexistence of a material fact. *Id.* We also agree the evidence must be viewed in the light most favorable to Mr. Campbell as the nonmoving party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). .

A motion for summary judgment is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded Mr. Campbell as the nonmoving party. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Id.* If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423.

Defamation has been defined as the invasion of the interest in reputation and good name. Johnson v. Nickerson, ___ N.W.2d ___ (Iowa 1996). In Iowa,

substantial truth is recognized as a defense in a defamation action. Hovey v. Iowa State Daily Publication Bd., Inc., 372 N.W.2d 253, 256 (Iowa 1985). As a result, libel defendants are not required to establish the literal truth of every detail of the publication, as long as the "sting" or "gist" of the defamatory charge is substantially true. *Id.* at 255. our supreme court has provided the following as the standard in determining whether summary judgment should be granted in defamation cases.

> If the underlying facts as to the gist or sting of the defamatory charge are undisputed, the court may determine substantial truth as a matter of law. In that event, the test, for summary judgment purposes, is whether the plaintiff would have been exposed to any more opprobrium had the publication been free of error.

Behr v. Meredith Corp., 414 N.W.2d 339, 342 (Iowa 1987) (cites omitted).

The facts in Behr can be analogized to the circumstances before us. In Behr, the plaintiff received a $10,000 fine, was given 400 hours of community service work, and imprisoned. The plaintiff complained the article libeled him by stating he received more than $100,000 from filing false claims, when in fact cash was

never paid.

In Behr, our supreme court held that the gist or sting of a defamatory charge is "the heart of the matter in question -- the hurtfulness of the utterance." Behr, 414 N.W.2d at 342 (quoting Vachet v. Central Newspapers, Inc., 816 F.2d 313, 316 (7th Cir. 1987). The gist or sting is determined by looking at the highlight of the publication and not to items of secondary importance and immaterial to the truth of the defamatory statement. *Id.*

The gist or sting of the article published by the Quad City Times was (1) the Campbells failed to provide tax records; (2) the Campbells were later arrested as a result; (3) a punishment was imposed following the arrest. The underlying facts as to the gist of the defamatory charge are undisputed. The federal documents clearly show (1) the Campbells failed to comply with a summons issued by the Internal Revenue Service; (2) the Campbells failed to comply with a court order enforcing the summons; (3) the Campbells failed to make an appearance in United States District court on July 5, 1991, to show cause why they should not be held in contempt of court; (4) a warrant for Norman Campbell's arrest was issued on July 8, 1991[1]; (5)

---

[1] The warrant stated Norman Campbell was charged with failure to comply with a court order enforcing a summons as entered on March 28, 1991.

Norman Campbell was arrested on July 19, 1991; (6) the Campbells were found in civil contempt of court for willful failure to comply with a District Court order; and (7) the Campbells were punished as a result of their contempt. As we have found the underlying facts to be undisputed, we must now determine whether Mr. Campbell would have been exposed to any more shame or disgrace if the publication had been free of error.

The only error we can find in the article which could be of any consequence in this defamation action is the article's recitation of the penalties imposed by the United States District Court. The order imposing the punishment as a consequence of being found in contempt of court stated Norman Campbell was to be imprisoned "for 120 days or until such earlier date as he complies with the order of this court of March 28, 1991, and the summons of August 1990." He was not fined $100 per day up to the maximum of $10,000 as the article stated.[2]

Norman and Janice failed to produce tax records and they were consequently found in contempt of court

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[2] Janice Campbell was fined $100 per day until the order and summons was complied with. except the fine liability was no' to exceed $10,000.

and punished. This was the sting of the article. It was these facts, if any, which caused shame in the eyes of the public. In addition, these facts are dearly undisputed. The fact Mr. Campbell was only imprisoned instead of imprisoned and fined is on no consequence. This error by the Quad City Times certainly did not expose Mr. Campbell to any more opprobrium had the article been free of error.[3] Accordingly, we affirm the district court order granting the Quad City Times motion for summary judgment.

II. *Motion for Change of Venue.* Mr. Campbell next contends the district court erred in denying his motion for change of venue. Such a ruling is reviewed for an abuse of discretion based on the record made by the moving party, Mr. Campbell in this case. Peters v. Vander Kooi, 393 N.W.2d 708, 711 (Iowa 1993).

Mr. Campbell presents two specific arguments under this issue. first, Mr. Campbell contends Judge David Sohr erred in refusing to hear the motion for change of venue. Second, Mr. Campbell argues Judge James Kelley erred in denying his motion for change of venue.

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[3] We filed the Campbells' remaining arguments regarding this issue to be without merit.

We find Mr. Campbell's first argument regarding Judge Sohr is without merit. a hearing on the motion for summary judgment was scheduled for February 11, 1994. On February 9, 1994, Mr. Campbell filed his motion for a change of venue and also filed a motion for a continuance. We find Mr. Campbell was not prejudiced by the delay in the ruling on the motion for a change of venue, since he had asked for and received a continuance on the motion for summary judgment. This argument must fail.

Mr. Campbell further argues Judge Kelley erred in denying the motion for a change of venue. Mr. Campbell contends Judge Kelley was biased against him and he erred in denying the motion for a change of venue. The burden of showing grounds for recusal is on the party seeking it. State v. Mann, 512 N.W.2d 528, 532 (Iowa 1994). While there is a constitutional right to a neutral and detached judge, mere speculation as to judicial bias is not sufficient for recusal. *Id.* In determining whether a judge should recuse himself or herself, the judge is to consider the reasonable person test embodied in Canon 3(D)(1) of our Code of Judicial Conduct.[4] *Id.* This test inquires "whether reasonable

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[4] Canon 3(D)(I) states "[a] judge should disqualify himself or herself in proceeding in which the judges impartiality might reasonably be

persons with knowledge of all facts would conclude that the judge's impartiality might be questioned." *Id.*

Mr. Campbell asserted Judge Kelley should recuse himself because (1) Judge Kelley was a criminal; (2) Judge Kelley was a member of an organized crime business; and (3) Mr. Campbell had allegedly brought a complaint against Judge Kelley to the Judicial Qualifications Commission. Judge Kelley discusses Mr. Campbell's allegations of prejudice at length in his ruling on Mr. Campbell's motion for change of venue. Judge Kelley stated he had no memory of any complaint being brought against him, nor did he remember ever being contacted by the Judicial Qualifications commission regarding any such complaint. We have no reason to believe otherwise, especially since Mr. Campbell has failed to provide any proof of this complaint. In addition, we find Mr. Campbell's other allegations to be completely without merit as he has provided nothing to support his claims. Judge Kelley did not err in ruling upon Mr. Campbell's motion for a change of venue.

We further find Judge Kelley reached the proper conclusion in ruling upon the motion for a change of venue. Judge Kelley found there were the district court judges who had no contact with Mr. Campbell and had

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questioned..."

been appointed subsequent to the time Mr. Campbell brought his complaint to the Judicial Qualifications Commission. We find Judge Kelley's decision to be well reasoned. Accordingly, we conclude there was no abuse of discretion in denying the motion for change of venue.

Upon consideration of all issues raised by that parties in

APPENDIX 5

IN THE SUPREME COURT OF IOWA

No. 94-828

Scott County No. 84251

ORDER
Filed May 3, 1996.

NORMAN L. CAMPBELL
Plaintiff-Appellant,

vs.

QUAD CITY TIMES, A Division of Lee Enterprises,
Incorporated, A Delaware Corporation,
Defendant-Appellee.

After consideration by this court en banc, further review of the above captioned case is denied.

Dated this 3rd day of May, 1996.

THE SUPREME COURT OF IOWA

BY /s/ Arthur A. McGiverin
Arthur A. McGiverin, Chief Justice

Copies to:
Norman L. Campbell
1832 W. 59th Street
Davenport, Iowa 52806

John DeDonker
600 Davenport Bank Building
Davenport, Iowa 52801